

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NIRMAL SINGH,

Plaintiff,

v.

F. GERARD HEINAUER, et al.,

Defendants.

CASE NO. C07-1151RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on cross-motions for summary judgment (Dkt. ## 33, 34). Neither party has requested oral argument. For the reasons stated below, the court DENIES Mr. Singh’s motion (Dkt. # 33), and GRANTS Defendants’ motion (Dkt. # 34) in part and DENIES it in part.

II. BACKGROUND

Plaintiff Nirmal Singh is a native of India who has resided lawfully in the United States since at least 1999, when he was granted asylum. In February 2001, he filed an I-485 application to adjust his immigration status to “lawful permanent resident.”

For reasons that the court will soon discuss in detail, United States Citizenship and Immigration Services (“USCIS”)¹ took no action on his application for many years. In

¹ When Mr. Singh filed his I-485 application, USCIS was still known as Immigration and Naturalization Services (“INS”) and was an agency of the Department of Justice.

1 July 2007, Mr. Singh filed this suit to compel adjudication of his application. In October
2 2007, USCIS issued a notice of its intent to deny Mr. Singh's application based on his
3 alleged provision of aid to an Indian group known as Damdami Taksal. According to the
4 notice, USCIS deemed Damdami Taksal to be a terrorist organization. On February 20,
5 2008, with cross-motions for summary judgment pending, USCIS denied Mr. Singh's
6 application because of his involvement with Damdami Taksal. Mr. Singh agreed that
7 USCIS's actions mooted his request to compel an adjudication of his application, but he
8 sought leave to amend his pleadings to add a claim challenging the denial of his
9 application. The court granted leave on May 21, 2008. Mr. Singh filed an amended
10 complaint naming Mr. Heinauer, USCIS Director Emilio Gonzales, and Michael
11 Chertoff, Secretary of the Department of Homeland Security ("DHS"), as Defendants.

12 On April 29, 2008, USCIS unilaterally reopened Mr. Singh's adjustment
13 application in response to a March 26, 2008 top-level memorandum directing the
14 reopening of all immigrant petitions that USCIS had denied based on providing material
15 aid to terrorist organizations. Dkt. # 34, Ex. A (Mar. 26, 2008 memo). The memo
16 explained that recent statutory changes expanded USCIS's discretion to grant relief in
17 cases where an immigrant applicant had involvement with certain terrorist organizations.
18 The memo directed USCIS adjudicators to withhold decisions on any applications that
19 might benefit from the statutory changes, and to reopen any applications adjudicated after
20 December 2007. All such applications were to be placed on hold pending further
21 guidance from the DHS Secretary regarding policy changes in light of the statutory
22 changes. Mr. Singh's application is "on hold" in accordance with the March 2008 memo.
23 Supp. Heinauer Decl. (Dkt. # 35) ¶ 6.

24 There is no evidence that USCIS has decided whether to implement policy
25 changes that might benefit Mr. Singh. There is no evidence that USCIS or DHS has
26 implemented any policy changes as promised in the March 2008 memo. There is no
27 evidence regarding when USCIS will make a decision on any policy changes. Indeed, the
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1 only evidence regarding the status of the policy changes comes from Mr. Heinauer, who
2 states only that decisions “are being made at the highest level of DHS after careful
3 consideration of all relevant factors” Supp. Heinauer Decl. ¶ 7. No one with
4 personal knowledge has provided any information regarding the status of the forthcoming
5 DHS policy changes. Mr. Singh’s application for adjustment of status remains reopened
6 and on hold. In the interim, he remains subject to travel limitations, work authorization
7 requirements, and other regulations that do not apply to lawful permanent residents.
8 Supp. Heinauer Decl. ¶ 8.

9 Before the court are two motions for summary judgment. Mr. Singh asks the court
10 to compel Defendants to immediately adjudicate his application. Defendants ask the
11 court to dismiss his complaint for lack of subject matter jurisdiction, or, alternatively, to
12 decline to compel adjudication of his application.

13 III. ANALYSIS

14 The court has addressed motions to compel adjudication of immigrant adjustment
15 of status applications in several prior orders. First, in *Amirparviz v. Mukasey*, No. C07-
16 1325RAJ, 2008 U.S. Dist. LEXIS 7964 (W.D. Wash. Feb. 4, 2008), the court rejected the
17 government’s contention that the court lacks subject matter jurisdiction in actions to
18 compel adjudication of adjustment of status applications. The court has reiterated that
19 holding in several decisions. *E.g.*, *Huang v. Mukasey*, No. C07-132RAJ, 2008 U.S. Dist.
20 LEXIS 10659 (W.D. Wash. Feb. 12, 2008), *Hong Wang v. Chertoff*, 550 F. Supp. 2d
21 1253 (W.D. Wash. 2008), *Ali v. Mukasey*, No. C07-1030, 2008 U.S. Dist. LEXIS 18171
22 (W.D. Wash. Mar. 7, 2008). Although Defendants adhere to their contention that the
23 court lacks subject matter jurisdiction, they concede that they raise no new arguments.
24 The court holds that it has subject matter jurisdiction in this action for all of the reasons
25 stated in *Amirparviz*. 2008 U.S. Dist. LEXIS 7964, at *5-11.

26 In *Amirparviz* and other cases cited in the previous paragraph, the court concluded
27 that the government’s long and inexplicable delay in adjudicating the adjustment of status

1 applications justified an award of mandamus relief. In each of those cases, the
2 government attributed its delay to delays in processing the “name check” portion of the
3 required investigation into the applicant’s background. The government failed to offer
4 any individualized evidence explaining why each applicant’s name check had been
5 delayed. The government also failed to offer any evidence as to when each applicant
6 could expect adjudication. The court, after considering the six “TRAC factors” and other
7 considerations relevant to its discretionary mandamus authority, found that the
8 adjudication delays in those cases were unacceptable and ordered relief. *E.g., Huang*,
9 2008 U.S. Dist. LEXIS 10659, at *19-20 (three-year delay), *Hong Wang*, 550 F. Supp. 2d
10 at 1254, 1260 (three-year, two-month delay), *Ali*, 2008 U.S. Dist. LEXIS, at *2, *13
11 (four-year delay).

12 Mr. Singh has been waiting more than seven years for adjudication of his
13 application, substantially longer than any of the plaintiffs in prior cases the court has
14 considered. Despite that long wait, however, there are important differences in the
15 circumstances surrounding his application. First, much of the USCIS’s delay was not
16 merely justified, it was legally mandated. All parties concede that from 2001 to May
17 2005, USCIS could not adjudicate Mr. Singh’s application because of a statutorily-
18 mandated 10,000-per-year cap on the number of asylees who could become lawful
19 permanent residents. Mr. Singh was thus forced to wait while older asylee applications
20 were adjudicated. No one argues that USCIS could have taken action on Mr. Singh’s
21 application until Congress lifted the numerical cap in May 2005. It was not until October
22 2007, almost two and a half years after the cap was lifted, that USCIS notified Mr. Singh
23 of its intent to deny his application.² Then, after receiving additional input from Mr.

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25 ² When Congress lifted the numerical cap, Mr. Heinauer’s USCIS service center hired additional
26 adjudicators and dramatically increased the number of refugee and asylee adjustment of status
27 applications it adjudicated. Heinauer Decl. (Dkt. # 9) at ¶¶ 5-6. In fiscal year 2007, his service
28 center adjudicated 82,000 refugee and asylee applications. *Id.* ¶ 6. Mr. Singh presents no
evidence that his application was processed unusually slowly among these applications.

1 Singh regarding his involvement with Damdami Taksal, USCIS denied his petition in
2 February 2008.

3 The court need not opine on the reasonableness of USCIS's delay from February
4 2001 to February 2008 in adjudicating Mr. Singh's application, because that issue is not
5 before the court. Whatever the reasons for the delay, and whatever the reasons for
6 USCIS's denial of the petition, the court has no jurisdiction to review the reasonableness
7 of a past delay, and no jurisdiction to review an adjudication that has subsequently been
8 withdrawn. No party argues otherwise.³

9 Instead, it is undisputed that the sole reason for the *current* delay in adjudicating
10 Mr. Singh's application is that USCIS awaits further input from the DHS Secretary
11 regarding policy changes applicable to immigrants in Mr. Singh's position. The March
12 2008 memo, the accuracy of which Mr. Singh does not challenge, directs USCIS to delay
13 decision on his application pending policy guidance from the DHS Secretary. Although
14 there is no compelling explanation regarding why the Secretary has not yet issued a
15 policy, or when he might issue a policy, the court finds that an eight-month delay in
16 issuing that policy is not presumptively unreasonable, and that Mr. Singh has not shown
17 that the delay is unreasonable. Indeed, the record does not reveal any effort on Mr.
18 Singh's part to inquire into the reasons for the Secretary's delay in issuing new policy
19 guidance. Regardless of Mr. Singh's dissatisfaction with USCIS's processing of his
20 petition over the past seven years, the current obstacle to adjudication is the DHS
21 Secretary's delay in promulgating new policy.

22 ³ Mr. Singh's amended complaint (Dkt. # 28) raises two claims: that the court should reverse the
23 denial of his application, and that the court should compel adjudication of his application. Mr.
24 Singh raised both claims because he filed his amended complaint just as USCIS *sua sponte*
25 vacated its denial of his application and placed his application on hold. No one disputes that the
26 court has no jurisdiction to review the vacated denial of his application. However, given
27 Defendants' actions to date, it is not unreasonable to expect that USCIS may deny his application
28 again. The court has already considered and granted Mr. Singh's motion to amend his pleadings
to include a claim based on denial of his application, and does not wish to repeat the exercise if
Defendants change course again. The court therefore stays this action to the extent it asserts a
claim based on denial of Mr. Singh's application, and will lift the stay on Mr. Singh's motion if
Defendants deny his application again.

1 Examining the same “TRAC factors” that the court considered in *Amirparviz* and
2 other cases leads to a different result in this case. First, as already noted, the court does
3 not find it presumptively unreasonable either that USCIS has placed Mr. Singh’s
4 application on hold pending guidance from the DHS Secretary, or that DHS has not
5 issued new guidance in more than eight months. The court is troubled by the absence of
6 information regarding when the Secretary will issue guidance, but not enough to impose
7 the extraordinary remedy of mandamus. Second, although the court notes the travel and
8 work restrictions to which Mr. Singh is subject pending adjudication of his application,
9 the court finds that they are not sufficiently onerous to support mandamus relief at this
10 time. Third, there is no indication that Mr. Singh is being singled out for unfavorable
11 treatment. As the court has noted, there is no evidence that USCIS adjudicated his
12 petition unusually slowly after Congress lifted the numerical cap in 2005. *See supra* n.2.
13 As to the current “hold” on his application, unlike previous cases before this court, in
14 which the Government could offer only systemic reasons for delay in processing a
15 particular application while other applications were adjudicated quickly, it appears that
16 all applications that raise concerns about providing aid to terrorist organizations are
17 subject to the same “hold” pending guidance from DHS.⁴

18 Although the court declines to award mandamus relief at this time, the court
19 emphasizes that its decision today should not be interpreted as suggesting that Defendants
20 may indefinitely delay a decision on Mr. Singh’s application. Mr. Singh is free to pursue
21 evidence regarding the reasons that the DHS Secretary has not issued new policy

22 ⁴ A detailed discussion of law surrounding the aid-to-terrorist-organizations provisions at issue in
23 this case is beyond the scope of this order. Briefly, the court notes that 8 U.S.C. § 182(a)(3)(B)
24 requires USCIS to deny admissibility to applicants who have provided aid to terrorist
25 organizations. *See* 8 U.S.C. §§ 1182(a)(3)(B)(vi)(III) (defining undesignated terrorist
26 organization), 1182(a)(3)(B)(iv)(VI) (defining “material support” to terrorist organization).
27 Statutory changes in late 2007 gave the DHS Secretary “unreviewable discretion” to provide
28 exemptions to this requirement for certain undesignated terrorist organizations. 8 U.S.C.
§ 1182(d)(3)(B)(i). The March 2008 memo directed USCIS to withhold adjudication of
applications that might benefit from any exemption policy that the Secretary implemented.
There is no dispute that Damdami Taksal is, at best, an undesignated terrorist organization, and
that Mr. Singh might benefit from an exemption.

1 guidance. Moreover, although the court is willing to accept Mr. Heinauer's vague
2 assertions that DHS is working diligently to issue new policy guidance at this stage of
3 delay, the court will be less accepting of such nebulous assertions as time passes. Mr.
4 Singh is free to move for mandamus relief again if he presents evidence showing that the
5 Secretary's delay is unreasonable, that USCIS's decision to await guidance from the
6 Secretary is mere pretext, or that Defendants' assertions of diligence in developing policy
7 guidance are unfounded.

8 IV. CONCLUSION

9 For the reasons stated above, the court DENIES Mr. Singh's motion (Dkt. # 33),
10 DENIES Defendants' motion (Dkt. # 34) to the extent it seeks dismissal of this action for
11 lack of subject matter jurisdiction and to the extent it seeks dispositive relief, and
12 GRANTS that motion to the extent it request that the court not award mandamus relief at
13 this time. The court's ruling is without prejudice to Mr. Singh renewing his motion for
14 mandamus relief under the circumstances the court described above.

15 DATED this 3rd day of December, 2008.

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18 The Honorable Richard A. Jones
19 United States District Judge
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